

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CREIGHTON TAKATA, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

RIOT BLOCKCHAIN, INC., et al.,

Defendants.

No. 18-CV-2293 (FLW)(ZNQ)

MOTION DATE: May 3, 2021

ORAL ARGUMENT REQUESTED

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT
JOHN STETSON'S MOTION TO DISMISS**

Matthew M. Oliver
LOWENSTEIN SANDLER LLP
One Lowenstein Dr
Roseland, NJ 07068
Tel.: 212-419-5852
Email: moliver@lowenstein.com

Daniel Walfish
WALFISH & FISSELL PLLC
405 Lexington Avenue 8th floor
New York, NY 10174
Tel.: 212-672-0521
Email: dwalfish@walfishfissell.com

Attorneys for Defendant John Stetson

Defendant John Stetson, by and through his undersigned attorneys, respectfully requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence (“FRE”), of the following documents attached in excerpted form as exhibits to the Declaration of Daniel Walfish:

Exhibit 1: Bioptix, Inc.’s registration statement on Form S-3, filed April 20, 2017 (“Initial S-3”) with the Securities and Exchange Commission (“SEC”).

Exhibit 2: Bioptix’s July 19, 2017 Form S-3/A filed with the SEC, consisting of Amendment No. 1 to the Initial S-3.

Exhibit 3: Bioptix’s August 24, 2017 Form S-3/A filed with the SEC, consisting of Amendment No. 2 to the Initial S-3.

Exhibit 4: Bioptix’s September 25, 2017 Form S-3/A filed with the SEC, consisting of Amendment No. 3 to the Initial S-3.

On a properly supported request, a court must take judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” FRE 201(b)(2), (c)(2). Courts routinely take judicial notice on a motion to dismiss of the contents of SEC filings where the filings are quoted, integral to, and explicitly relied on in a plaintiff’s complaint. *E.g., In re NAHC, Inc. Secs. Litig.*, 306 F.3d 1314, 1331 (3d Cir. 2002); *In re Donald J. Trump Casino Securities Litig.*, 7 F.3d 357, 368 n.9 (3d Cir. 1993); *see also* Opinion Granting Defendants’ Motion to Dismiss [ECF No. 166] at 2 n.3 (noting that the

Court may take judicial notice of “certain publicly available documents, such as SEC filings”).

Each of the SEC filings at issue is quoted, discussed, integral to, and relied on in the Consolidated Second Amended Class Action Complaint (“SAC”), as follows:

Document	Declaration Exhibit No.	SAC paragraphs
April 20, 2017 Initial S-3 registration statement	1	347-356
July 19, 2017 Form S-3/A (Amendment No. 1 to Initial S-3)	2	361-365
August 24, 2017 Form S-3/A (Amendment No. 2 to Initial S-3)	3	366-368
September 25, 2017 Form S-3/A (Amendment No. 3 to Initial S-3)	4	369-373

For the above reasons, Stetson respectfully requests that the Court take judicial notice of the above-referenced documents.

Dated: February 8, 2021

Respectfully submitted,

LOWENSTEIN SANDLER LLP

By: s/ Matthew M. Oliver

Matthew M. Oliver

One Lowenstein Dr

Roseland, NJ 07068

Tel.: 212-419-5852

Email: moliver@lowenstein.com

Daniel Walfish (*admitted pro hac vice*)

WALFISH & FISSELL PLLC

405 Lexington Avenue 8th floor

New York, NY 10174

Tel.: 212-672-0521

Email: dwalfish@walfishfissell.com

Attorneys for Defendant John Stetson